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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.       | CONFIRMATION NO.       |
|---|-------------|----------------------|---------------------------|------------------------|
| 10/687,622  | 10/20/2003  | Howard Tanner        | 23660-00610               | 4684                   |
| 25243 7590 12/31/2007<br>KELLEY DRYE & WARREN LLP<br>3050 K STREET, NW<br>SUITE 400<br>WASHINGTON, DC 20007 |             |                      | EXAMINER<br>WOO, JULIAN W |                        |
|   |             |                      | ART UNIT<br>3773          | PAPER NUMBER           |
|   |             |                      | MAIL DATE<br>12/31/2007   | DELIVERY MODE<br>PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/687,622

Applicant(s)

TANNER ET AL.

Examiner

Julian W. Woo

Art Unit

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 75, 96, 97, 100 and 106-112 is/are pending in the application.
- 4a) Of the above claim(s) 106, 107, 111 and 112 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 75, 96, 97, 100 and 108-110 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 15, 2007 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 96 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Each of the first and second portions are said to extend "substantially parallel to a wall of the vessel." The vessel, an unpatentable part of the human body, is essentially claimed as a structural part of the invention. The Examiner recommends wording, such as --extendable— rather than "extends."

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 75, 96, 97, and 100 are rejected under 35 U.S.C. 102(e) as being anticipated by Fleischman et al. (6,132,438). Fleischman et al. disclose, at least in figures 29 and 31A-31C, a fastener assembly including flexible fastening assembly including opposing first and second portions (116, 117) that are operable to secure a surgical component to a vessel via a compressive force, the fastening assembly having a substantially linear storage position (see fig. 29 for storage of the assembly within needle 66) and a normally coiled position (see fig. 31C), where the fastening assembly is a coil spring in the substantially linear storage position and in the normally coiled position (see coils at 116 or 117), where in the normally coiled position, the first portion is disposed on one side of the surgical component and the second portion is disposed opposite to the surgical component on one side of the vessel; where each of the first portion and the second portion extendable substantially parallel to the wall of the vessel (i.e., tangential to the wall of the vessel), where each of the first and second portions (116 or 117) is formable into a semi-knotted (i.e., looped) portion in the normally coiled position, and where each of the first and second portions comprises an axially wound portion.

6. Claim 108-110 are rejected under 35 U.S.C. 102(b) as being anticipated by Elliott et al. (4,041,931). Elliott et al. disclose, at least in figures 1 and 2 and in col. 2, line 59 to col. 3, line 31, a fastener assembly for use during surgical procedure, where the assembly includes a flexible fastening assembly having at least one coil portion (26), the coil portion including a first portion and a second portion (legs 28) operable to be drawn substantially together by applying a compressive force to secure a component to a vessel, the flexible fastening assembly having two end portions (24), where the two end portions are disposed on the same end of the first portion or the second portion (when end portions are "overlapped"), where the first and second portions are disposable respectively on one side of a surgical component and one side of a vessel, where the fastening assembly is a spring assembly or manipulated coil spring.

***Response to Amendment***

7. Applicant's arguments filed on October 15, 2007 have been fully considered but they are not fully persuasive: See the new and restated grounds of rejection. With respect to arguments regarding the rejection of claims based on the Fleischman reference: Fleischman indeed discloses a "coil spring in its elongated or storage position." That is, Fleischman discloses a coil spring (at 116 or 117) in the two abovementioned positions as seen in figures 29 and 31C.

***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian W. Woo whose telephone number is (571) 272-4707. The examiner can normally be reached Mon.-Fri., 7:00 AM to 3:00 PM Eastern Time, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Julian W. Woo  
Primary Examiner

December 24, 2007